

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION

YVONNE RIOS, INDIVIDUALLY	§	
AND AS NEXT FRIEND OF	§	
ANDREW RIOS, ALFREDO RIOS	§	
DIESEL RIOS, AND LONDON RIOS,	§	
MINOR CHILDREN, PLAINTIFFS	§	CIVIL ACTION NO.7:12-363
	§	JURY
VS.	§	
	§	
CARROLL DARWIN BIRKEY	§	
DEFENDANT	§	

MOTION FOR FINAL JUDGMENT

1. Plaintiffs YVONNE RIOS, as next friend of ANDREW RIOS, ALFREDO RIOS, DIESEL RIOS AND LONDON RIOS, minors, and ANDREW RIOS, ALFREDO RIOS, DIESEL RIOS AND LONDON RIOS, minors, and Defendant CARROLL DARWIN BIRKEY move for Final Judgment in this matter.

2. On the 29th day of August, 2013, came on to be heard in regular order the above-entitled and numbered cause in which YVONNE RIOS, as next friend of ANDREW RIOS, ALFREDO RIOS, DIESEL RIOS AND LONDON RIOS, minors, and ANDREW RIOS, ALFREDO RIOS, DIESEL RIOS AND LONDON RIOS, minors, are Plaintiffs and in which CARROLL DARWIN BIRKEY is the Defendant.

3. The Plaintiffs appeared in person and by attorney of record and announced ready for trial. The Defendant, by and through Defendant's attorney of record, appeared and announced ready for trial. No jury was demanded, and the jury was expressly waived by all parties, so all matters of fact as well as of law were submitted to the Court for its final hearing and determination.

4. Plaintiffs and Defendant announced to the Court that an agreement of settlement had been reached by all parties, subject to the approval of the Court, whereby the Defendant is to pay to the Plaintiffs the sums of FORTY THOUSAND AND NO/100 DOLLARS (\$40,000.00) in full settlement of ANDREW RIOS' claims, of which amount TEN THOUSAND AND NO/100 DOLLARS (\$10,000.00) will be paid to or at the direction of Yvonne Rios for fees and expenses, of which FIVE THOUSAND AND NO/100 DOLLARS (\$5,000.00) will be made payable to ORTIZ & MILLIN, L.P. and FIVE THOUSAND AND NO/100 DOLLARS (\$5,000.00) will be made payable to ORTIZ & MILLIN, L.P. AND LONCAR AND ASSOCIATES, jointly); TWENTY FIVE THOUSAND AND NO/100 DOLLARS (\$25,000.00) in full settlement of ALFREDO RIOS' claims, of which amount SIX THOUSAND TWO HUNDRED FIFTY AND NO/100 DOLLARS (\$6,250.00) will be paid to or at the direction of Yvonne Rios for fees and expenses; TEN THOUSAND AND NO/100 DOLLARS (\$10,000.00) in full settlement of LONDON RIOS' claims, of which amount TWO THOUSAND FIFTY AND NO/100 DOLLARS (\$2,500.00) will be paid to or at the direction of Yvonne Rios for fees and expenses; and, TEN THOUSAND AND NO/100 DOLLARS (\$10,000.00) in full settlement of DIESEL RIOS' claims, of which amount TWO THOUSAND FIFTY AND NO/100 DOLLARS (\$2,500.00) will be paid to or at the direction of Yvonne Rios for fees and expenses, for all claims arising out of this cause of action and for all injuries and damages suffered by the Plaintiffs as a result of the accident alleged in Plaintiffs' Petition on file herein.

5. The Parties have announced and agreed that such payment and compromise is made in settlement of a disputed claim, Defendant herein having denied and still denying specifically any liability to Plaintiffs.

6. The Court appointed MARISSA CARRANZA HERNANDEZ, a practicing attorney of Edinburg, Texas as guardian ad litem to conduct an investigation as to the reasonableness of the proposed settlement and to make a report to the Court.

7. The parties agree that Yvonne Rios take nothing on her individual claims.

8. Plaintiffs and Defendants thus move this court to enter judgment in accordance with the agreement of the parties and in accordance with the evidence presented to the court on August 29, 2013 and in accordance with the judgment attached that:

ANDREW RIOS, Minor Child, recover the sum of the sum of FORTY THOUSAND AND NO/100 DOLLARS (\$40,000.00), OF WHICH TEN THOUSAND DOLLARS (\$10,000.00) WILL BE PAID TO OR AT THE DIRECTION OF YVONNE RIOS FOR ATTORNEYS' FEES AND EXPENSES AND OF WHICH THIRTY THOUSAND DOLLARS (\$30,000.00) WILL BE DEPOSITED INTO THE REGISTRY OF THE COURT:

ALFREDO RIOS, Minor Child, recover the sum of TWENTY-FIVE THOUSAND AND NO/100 DOLLARS (\$25,000.00), OF WHICH SIX THOUSAND TWO HUNDRED FIFTY AND NO/100 DOLLARS (\$6,250.00) WILL BE PAID TO OR AT THE DIRECTION OF YVONNE RIOS FOR ATTORNEYS' FEES AND OF WHICH EIGHTEEN THOUSAND SEVEN HUNDRED FIFTY AND NO/100 DOLLARS (\$18,750.00) WILL BE DEPOSITED INTO THE REGISTRY OF THE COURT.

LONDON RIOS, Minor Child, recover the sum of TEN THOUSAND AND NO/100 DOLLARS (\$10,000.00) OF WHICH TWO THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$2,500.00) WILL BE PAID TO OR AT THE DIRECTION OF YVONNE RIOS FOR ATTORNEYS' FEES, AND OF WHICH SEVEN THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$7,500.00) WILL BE DEPOSITED INTO THE REGISTRY OF THE COURT.

DIESEL RIOS, Minor Child, recover the sum of TEN THOUSAND AND NO/100 DOLLARS (\$10,000.00) OF WHICH TWO THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$2,500.00) WILL BE PAID TO OR AT THE DIRECTION OF YVONNE RIOS FOR ATTORNEYS' FEES, AND OF WHICH SEVEN THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$7,500.00) WILL BE DEPOSITED INTO THE REGISTRY OF THE COURT.

Yvonne Rios TAKE NOTHING, individually.

9. PLAINTIFFS, YVONNE RIOS, INDIVIDUALLY AND AS NEXT FRIEND OF ANDREW RIOS, ALFREDO RIOS, LONDON RIOS AND DIESEL RIOS, MINORS, AND DEFENDANT CARROLL DARWIN BIRKEY pray that the attached judgment be entered and they have such other relief as they may show themselves to be entitled.

Respectfully submitted,

/s/ Sandra Sterba-Boatwright

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ATTORNEY AD LITEM

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing instrument has been forwarded Electronically and/or by Telecopier, to the parties listed below, on this the 5th day of September, 2013.

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